GA 2231/2000

(2)

CF0000064661

High Court of Madhya Pradesh
JABALPUR.
Division Bench
14 AUG 2000
Reg. No. 132
Recept Clerk
High Court, Jabalpur

XLII-189(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. STNO-37/98 Name मुकेश उर्फ धनीराम सतनामी

Father's name -देवदास सतनामी

Residence - - -302 आर.टी. - - - - - - Age - २८ वर्ष - - - -

Sentenced to -आजीवन कारावास - - - on -14/7/2000 - - -

Under Section - - - - - - - - - - - - - by अपर सत्र-न्यायाधीश महासमुन्द (मध्यप्रदेश)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement सत्र निर्णय प्रतिलिपि ।
2. Date on which copy received- 30/7/2000 - - - - - - - -
3. Date on which Appeal sent- - - 3/8/2000 - - - - - - - - -
4. Whether the prisoner wishes to be represented or not- ∞ - - - -

No. - - STNO-37/98 - - - Name मुकेश उर्फ धनीराम पि० देव-दास सतनामी

Confined in - - - - छ-ग्रे - - - - Jail- बिलासपुर - (मध्यप्रदेश) - - -

No. - - - - - - - - - 34 - - Dated - - -3/8/2000 - 199- - - - - -

Forwarded to the सेवा में रजिस्ट्रार महोदय माननीय उच्चन्यायालय मध्यप्रदेश जबलपुर - -

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
केन्द्रीय कारागार बिलासपुर
Jail

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 2231 सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:-

HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

23-1-2006

Smt. Kiran Jain, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Today this matter was listed for hearing on I.A. No.249/2006 for extension of date of appearance.

Learned counsel for the appellant submitted that even though the accused/appellant has been granted bail, but on account of poverty he is not able to furnish bail bonds and he is in detention for more than 8 years, therefore, the appeal itself be heard finally, to which learned Additional Public Prosecutor has no objection.

Therefore, arguments for final disposal were heard.

By this appeal, the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 14th July 2000 passed by the 1st Additional Sessions Judge, Raigarh in S.T. No.37/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

XI-HC-22

(20)

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The case of the prosecution, in brief, is that on 4-11-97 PW-11 Budhiyarin @ Bilai lodged the report Ex.-P/15 in the police station Saranggarh to the effect that 'today she and her brothers Dhansai and Dharam were at residence. Stepbrother Bhuruva was also at her residence. At about 9 a.m. she went to take bath at the pond, when she returned at about 10 a.m., she saw that her brother Bhuruva was attacking Dhansai with a spade, as a result of which Dhansai fell down on the ground. She started crying 'come come Bhuruva is killing Dhansai'. On hearing her cries, Chandwa came out of the house and enquired from her, then she informed him that Bhuruva has attacked Dhansai and ran away. Chandwa chased Bhuruva. She went near her brother Dhansai, saw the injuries on the neck of Dhansai caused with the spade and blood was oozing out of it. Dhansai had died. Thereafter, she left for the agricultural field to call her father Shyamlal and mother Gyan Bai. But they were coming back to their residence and she informed them about the incident. Receiving this report, S.H.O. after registering case, took up the investigation, left for the scene of occurrence, and after giving notice to the Panchas prepared Panchanama Ex.-P/5 of the dead body of the deceased. Based on the memorandum Ex.-P/4 given by the accused weapon of offence i.e. spade was recovered at the instance of the accused under Ex.-P/3. The site plan Ex.-P/9 was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prepared. Another site plan Ex.-P/10 was prepared by Patwari. The dead body of the deceased was sent for postmortem examination to the Primary Health Centre, Saranggarh under Ex.-P/11-A where Dr. S.K. Tiwari conducted the postmortem on the dead body of the deceased and prepared postmortem report Ex.-P/11 in which he opined that the cause of death is as a result of shock and haemorrhage due to injuries. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.-P/16 and P/17 from where report Ex.-P/18 was received.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st class, Saranggarh who in turn committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 14 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he was mentally upset, therefore, he does not know anything about the incident. Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused convicted and sentenced the accused in the manner as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of Dhansai is not in dispute.

Learned counsel for the accused/appellant argued that all the witnesses have turned hostile and the accused/appellant has been convicted merely on the ground of recovery of the spade at his instance, but there is no serologist's report to connect the spade with the death of Dhansai.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent supported the judgment of the trial Court.

We have perused the judgment. The trial Court has convicted the accused merely on the ground of recovery of the spade and also on the basis of the evidence of PW-12 Kartikram @ Harriheen. It is true that all the witnesses have turned hostile. Even PW-11 Budhiyarin @ Bilai, who lodged the report and is said to have ~~seen~~ witnessed the incident, has turned hostile. She has not supported the prosecution case.

As far as evidence of PW-12 Kartikram is concerned, she has stated that 2 years before the date of her evidence, when she was at her residence, she saw that both the brothers namely, Bhuruva

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रेजिस्ट्रार के अन्तिम आदेश

and Dhansai were quarrelling. She came out of the house and asked them as to why you brothers are quarrelling and thereafter she left the scene. She has not stated that the accused was attacking the deceased with the spade or she saw any injury caused by the accused to the deceased. She has stated only that brothers were quarrelling. Merely on the basis of this evidence, without reference to the injury and the fact that the weapon of offence i.e. spade is said to have been used by the accused, the accused cannot be connected with the murder of the deceased.

As far as evidence of PW-3 Sahdeo is concerned, he has stated that on hearing the cries of Bilai, he went towards the house of Bilai, but she was not present at her residence. Bhuvuva was running away. He chased, caught hold of him and he accompanied him. He called the Kotwar and thereafter they took him to the police station. But this witness has also been declared hostile and he has not supported the prosecution case. He has not stated that he saw Dhansai in injured condition or the accused was carrying spade in his hand, rather this witness has stated that he caught hold of the accused and the accused accompanied him. Therefore, from this evidence no inference can be drawn that this witness witnessed the crime in question. Merely on the suspicion, without further corroboration about the involvement of the accused in crime in

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

question, without legal and clinching evidence the accused/appellant cannot be connected with the crime in question on the basis of the evidence of Sahdeo (PW-3).

Now coming to the question of recovery of the spade, in the first instance, both the witnesses to the recovery have stated that the police obtained their signatures on the papers. Even if the recovery is believed, there is no Serologist's report that the human blood, that too of the blood group of the deceased, was found on the spade in question without which the recovery of the spade cannot be connected with the murder of Dhansai by the accused. There is no other evidence on record to connect the accused with the murder of the deceased. Therefore, finding of the trial Court convicting the accused for commission of murder of the deceased cannot be sustained, as the same is not based on any legal or clinching evidence.

In the result, the appeal succeeds and same is allowed. The conviction and sentence awarded by learned Additional Sessions Judge under Section 302 of the I.P.C. are set aside. The accused/appellant is acquitted of the charge. He be released immediately, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Bar

[पीछे देखिये

22.06